IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

ST.Rev..No. 269 of 2007

TA.No.83/2004 & CROSS OBJECTION OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH KOTTAYAM

.....

PETITIONER

THE KALLAR SERVICE CO-OPERATIVE BANK LTD
CHITHIRAPURAM, KALLAR, IDUKKI DISTRICT,
REPRESENTED BY THE PRESIDENT SABU JAMES.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENT:

THE STATE OF KERALA.

BY GOVERNMENT PLEADER SRI.K.B.PRADEEP.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.269 of 2007

Dated this the 12th day of September, 2007.

O R D E R

H.L.Dattu, C.J.

The revision petitioner is a Co-operative Bank. It is also a dealer under the Kerala General Sales Tax Act. The assessment year in question is 1997-1998.

2. The assessing authority has quantified the tax liability of the petitioner. Aggrieved by that order, the assessee was before the first appellate authority in S.T.A.No.246 of 2003. The first appellate authority has allowed the appeal and has granted the claim of the assessee. The State being aggrieved by the said order had carried the matter in appeal in T.A.No.83 of 2004. The Tribunal, while allowing the revenue's appeal, has observed in its order as under.

> "5.We heard both sides and examined the rival contentions. An analysis of the stock statement as per accounts as is revealed by the assessment records show the following details:
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> | | |
> |---|---|
> | Opening stock of Pepper | 44,776.800 kgs. |
> | Purchase | 3,11,211.000 kgs. |
> | Total | 3,55,987.800 kgs. |
> | Closing stock | 1,925.800 kgs. |
> | Balance available for sale | 3,54,062.000 kgs. |
> | Pepper sold | 3,48,800.000 kgs. |
> | Deficit | 5,262.000 kgs. |

There is no proper explanation for this deficit. The direction of the first appellate authority to grant exemption is observing as:

" .....I am of the view that the appellant has only local sales. The quantity in the declaration covers the quantity sold and the shortage is allowable in this case. The Tribunal in its Order No.TA 57/91 has also observed that there is need to examine whether the quantity sold is covered by declaration in Form 25.

Therefore the assessing authority is directed to accept the books of accounts since the appellant has only local sales.....".

There is no claim of shortage in the statement of accounts filed. In that circumstances the vague finding of the first appellate authority that the quantity in the declaration covers the quantity sold and the shortage is allowable in this case is not based on facts. The quantity of 70 kgs as per accounts is not covered by Form 25 declarations. Besides, the quantity of 1870.900 kgs for Rs.34,530/- also is not covered by Form 25 declarations. Apart from the above there is a deficit of 5262 kgs for which there is no satisfactory explanation. Hence the only presumption is that this quantity also acquire the character of last purchase in the State at the hands of the respondent. In the circumstances we find that there is no irregularity or illegality in bringing the turnover related to this deficit of pepper also to assessment. Therefore we set aside the order of the first appellate authority restoring the assessment and allowing the appeal filed by the State. The cross objection filed by the respondent is dismissed."

3. Aggrieved by the aforesaid findings and conclusions reached by the Tribunal, the assessee is before us in this tax revision case.

4. The assessee has raised the following questions of law for our consideration and decision.

(i). Whether on the facts and in the circumstance of the case is the Tribunal justified in its finding that shortage in weight is not explained when each and every sale bills issued by the purchasers of the goods at Kochi and other places clearly showed the quantity in shortage with the reasons for that. Is the decision

of the Tribunal perverse and irregular in view of the bills issued by the purchasers of goods as shown in Annexure I to III and statement in Annexure IV?

(ii). Whether on the facts and in the circumstance of the case is the Tribunal justified in law in restoring the assessment without evaluation of the records of the case, sales bills produced and in the circumstances evidenced by the records that after removal of dust and moisture content from the pepper no pepper remains with the petitioner or any quantity of pepper lost, destroyed, or otherwise disposed off, to acquire the character of last purchase in the State to attract liability to levy of tax under section 5 of the Act?

(iii). Whether on the facts and in the circumstance of the case is the Tribunal justified in law in stating that no declaration in Form No.25 was produced in respect of loss in weight by deduction of dust content and driage due to evaporation of moisture and when no pepper is left with the petitioner or sold other than the net quantity of pepper shown in the purchase bills issued by the purchasers after deduction of the quantity of dust and moisture content so as to produce the declaration and entire quantity of pepper sold as pepper was covered by Form No.25 declarations.

(iv). On the facts and in the circumstance of the case is the Tribunal justified in law in reversing the order of first appellate authority without any reason, evidence or materials?

5. We have carefully perused the findings and conclusions reached by the Tribunal. In our opinion, the findings and conclusions so reached by the Tribunal is totally on the facts pleaded by the assessee. Alternatively, it can be said that no question of law as such is decided by the Tribunal.

6. The revisional jurisdiction of this Court is confined only to two ingredients. If the Tribunal has decided any question of law erroneously or failed to decide any question of law, then only a revision petition is

maintainable before this Court.

7. As we have already stated, the findings and conclusions reached by the Tribunal is purely on facts. In our opinion, no question of law arises for consideration of this Court in this revision petition filed by the assessee. Accordingly, the revision petition requires to be rejected and it is rejected without reference to respondent.

8. In view of the order passed in the revision petition, I.A.No.2222 of 2007 is closed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS